HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.813 of 2007

Between:

A.P. Southern Power Distribution Company of A.P. Ltd.,
Rep., by its Chairman & Managing Director, Tirupathi
and another

… Appellants

And

A. Raja Rao and another

… Respondents

Counsel for the appellants : Shri G. Vidyasagar

Counsel for respondent No.1 : Shri S. Ravindranath

::JUDGMENT::

October 1, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 27-2-2007 passed by the learned Single Judge, whereby he disposed of Writ Petition No. 16291 of 2005 filed by respondent No.1 for his promotion to the post of Junior Accounts Officer by declaring that he is entitled to relief in terms of order dated 15-3-1995 passed in Writ Petition No.15435 of

1990 and judgment dated 17-3-1997 passed in Writ Appeal No. 561 of 1996.

Respondent No.1 joined the service of the erstwhile Andhra Pradesh State Electricity Board as Bill Collector on 24-1-1974. The post held by him was re-designated as Revenue Cashier with effect from 1-5-1982 and was integrated in the cadre of Lower Division Clerk. He was promoted as Upper Division Clerk on 8-8-1996. After nine years, he filed writ petition for issue of a mandamus to the non-petitioners (the appellants herein) to consider his case for promotion to the post of Junior Accounts Officer without insisting on the qualification of graduation.

In the affidavit filed by him, respondent No.1 pleaded that he had been promoted as Upper Division Clerk without insisting on the requirement of possessing the qualification of graduation and, therefore, the appellants were not entitled to deny him promotion to the post of Junior Accounts Officer on the ground that he has not passed graduation. He also pleaded that persons holding posts of Typist, which constituted one of the sources of promotion to the post of Junior Accounts Officer were promoted without insisting on the requirement of graduation and, therefore, there can be no justification to deny promotion to the persons holding the post of Upper Division Clerk.

The learned Single Judge did not examine the scheme of the Andhra Pradesh State Electricity Board Service Regulations (for short, 'the Regulations') including the prohibition contained in Note 2 appearing below Clause 14 and disposed of the writ petition simply by relying on the order passed in Writ Petition No. 15435 of 1990, which was confirmed by the Division Bench in Writ Appeal No.561 of 1996 decided on 17-3-1997, against which S.L.P.No.20307 of 1997

was dismissed by the Supreme Court.

We have heard learned counsel for the parties and perused the record. We have also gone through order dated 15-3-1995 passed in Writ Petition No.15435 of 1990 and judgment dated 17-3-1997 of Writ Appeal No.561 of 1996 and are convinced that the claim made by respondent No.1 for promotion to the post of Junior Accounts Officer could not have been accepted by the learned Single Judge ignoring the fact that he does not possess the qualifications prescribed under Clause14 of the Regulations.

Shri S. Ravindranath, learned counsel for respondent No.1 fairly conceded that his client did not challenge the vires of Clause 14 of the Regulations, but submitted that the direction given by the learned Single Judge may not be disturbed because respondent No.1 had been promoted as Upper Division Clerk by relaxing the requirement of possessing the qualification of graduation and that the Upper Division Clerks have been arbitrarily discriminated vis-à-vis Typists.

In our opinion, there is no merit in the submission of the learned counsel. Since respondent No.1 did not challenge the constitutionality or vires of Note 2 appearing below Clause 14 of the Regulations, it is extremely doubtful whether he can claim promotion to the post of Junior Accounts Officer on the pretext that while promoting him as Upper Division Clerk, the competent authority relaxed the requirement of the academic qualification. The order passed by the learned Single Judge in Writ Petition No.15435 of 1990 and the judgment of the Division Bench in Writ Appeal No.561 of 1996 do not have any bearing on the claim of respondent No.1 because in that case, the Court did not consider a provision similar to the one contained in Clause 14 of the Regulations.

In view of the above, we may have allowed the appeal, set aside the order of the learned Single Judge and dismissed the writ petition, but keeping in view the fact that the learned Single Judge did not deal the case of respondent No.1 on merits, we feel that ends of justice will be met by remanding the matter to the Single Bench for fresh adjudication of the writ petition.

In the result, the appeal is allowed. The order under challenge is set aside and the writ petition is remanded to the Single Bench for fresh adjudication of the claim made by respondent No.1. The case may now be listed before an appropriate Bench as per roster.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

October 1, 2007
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